IN THE HIGH COURT OF DELHI

Crl.M.C.No.6621-24/2006

Basara & Ors. ..... Petitioners
! through: Mr.R.M.Tufail, Advocate

VERSUS

$ State & Anr. ..... Respondents
^ through: Mr.M.N.Dudeja for the State

RESERVED ON: 29.08.2007

% DATE OF DECISION: 03.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. The petitioners have filed this petition seeking quashing of FIR No.4/2005 registered against them under Section 307 read with Section 34 IPC with Police Station, Samay Pur Badli.

2. Briefly stated, the facts of the case are that the FIR in question was registered against the petitioners on 2.1.2005 on the statement of respondent No.2, Sheikh Muslim.

3. As per the contents of FIR, on 1.1.2005, at about 7:00 PM an altercation had taken place between accused Noora and

Basara and nephew of the complainant. Altercation ended with the intervention of the complainant. Later on, at about 9:30 PM when the complainant along with his family members were doing some work in the front of their shop, accused Basara, Noora, Sammad and Jahangir came along with their friends. That Basara was carrying a knife, Noora was carrying a sariya, Sammad was carrying a sword and Jahangir was carrying a hockey. That accused Noora attacked with sword on thigh of the left leg of the complainant and Basara gave a knife blow in the abdomen of the son of the complainant, Zakir.

4. Trial commenced before the learned Addl. Sessions Judge. Charges under Section 307 read with Section 34 IPC were framed against the 4 accused. Out of 16 prosecution witnesses, 5 have been examined and discharged.

5. The parties have amicably compromised the subject matter of the FIR in question amongst themselves and therefore both the parties have requested that the afore-mentioned FIR registered against the petitioners on the complaint of respondent No.2 be quashed by this court.

6. The learned counsel appearing on behalf of the State had opposed the quashing of the FIR in question, inter alia, on the ground that accusations against the accused are serious. The

learned counsel had further submitted that the offence under Section 307 IPC for which FIR in question is registered is non-compoundable and therefore he had prayed that the request of the petitioners for quashing of FIR be not accepted. He relied upon following judgments of the Supreme Court in support of his contention:-

(i) *Surendra Nath Mohanty Vs. State of Orrisa* AIR 1999 SC 2181

(ii) *Bankat Vs. State of Maharashtra* 2005 Cri.L.J. 646

(iii) *Ram Lal & Anr. Vs. State of Jammu & Kashmir* AIR 1999 SC 895

7. Per contra, learned counsel for the petitioners has relied upon following judgments of the Supreme Court :-

(i) *Ram Pujan Vs. State of UP* (1973) 2 SCC 456

(ii) *Y. Suresh Babu Vs. State of Andhra Pradesh* 1987 2 (JT) SC 361

(iii) *Mahesh Chand Vs. State of Rajasthan* 1990 (Supp.) SCC 681

On the strength of these 3 judgments, counsel had contended that the power of this court to quash the FIR is not limited by Section 320 of the Code of Criminal Procedure, 1973.

8. I need not note all the judgments cited by the learned

counsel for the parties and distinguish one from another. Suffice would it be to note the decision reported as *B.S.Joshi Vs. State of Haryana* AIR 2003 SC 1386 wherein it was held by the Supreme Court that Section 320 of Code of Criminal Procedure, 1973 does not limit or effect the powers of the High Court to quash the criminal proceedings or FIR or complaint even in non-compoundable offences. Para 8 of the said judgment is relevant and is reproduced here-in-below:-

> "**8.** It is thus clear that *Mahdu Limaye's* case does not lay down any general proposition limiting power of quashing the criminal proceedings of FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power."

9. It is apparent from the judgment of the Supreme Court in *B.S.Joshi's* case (Supra) that this court is not powerless to quash the criminal proceedings in cases arising out of non-compoundable offences. What this court has to look for is whether the quashing would secure the ends of justice or not?

10. In *Ram Pujan's* case (Supra) appellants and 3 others were convicted by Sessions Court under Sections 326 and 323 read

with Section 149 IPC and sentenced to undergo rigourous imprisonment for a period of 4 years on former count and 3 months on latter count. On appeal to the High Court, the conviction of the appellants was altered to that under Sections 326 and 323 read with Section 34 IPC and each of them was sentenced to undergo rigorous imprisonment for a period of 2 years. High Court rejected the application for compromise filed on behalf of injured and the appellants. Noting the compromise Supreme Court reduced the sentence awarded to the appellants. It was held that even though major offences for which appellants were convicted were non-compoundable but the fact of compromise can be taken into account in determining the sentence.

11. In *Y.Suresh Babu's* case (Supra) appellant was convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for a period of one year. Treating the matter as a special case, leave to compound the offence was granted by the Supreme Court.

12. In *Mahesh Chand's* case (Supra) accused were acquitted by the Trial Court but they were convicted by the High Court for the offence under Section 307 IPC. There was a counter case arising out of the same transaction which was compromised.

Considering the nature of the case and circumstances under which offence was committed, leave to compound the offence was granted by the Supreme Court.

13. A perusal of afore-noted three decisions shows that the Supreme Court has been granting leave to compound the offences which were non-compoundable and serious in nature.

14. In the present case since the parties have amicably compromised the subject matter of FIR in question among themselves, no useful purpose is likely to be served by continuing with the afore-mentioned criminal case registered against the petitioners. Petitioners and complainant are residents of same locality. Peace has been brought in the locality with the intervention of the well wishers of the locality. When there is peace in locality, there will be peace in the town. When there is peace in town, there will be peace in city. When there is peace in city, there will be peace in State. When there is peace in State, there will be peace in country. It is therefore in the interest of the society that permission to quash the FIR in question is granted by this Court. Moreover, since petitioners and complainant are resident of same locality, continuation of criminal proceedings will only revive the bitter memories of the past and may lead to further enmity between them.

15. The petition is accordingly allowed. FIR No.4/2005 registered against the petitioners under Section 307 read with Section 34 IPC with Police Station Samay Pur Badli is quashed and all consequent proceedings pursuant thereto are also ordered to be dropped.

16. No costs.

03 September, 2007 PRADEEP NANDRAJOG
vg JUDGE